IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 773 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYKUMAR MUNASWAMI ASIAN TRADERS

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR SAMIR DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner is praying for issuance of a writ of certiorari or any other appropriate writ, direction or

order quashing and setting aside the order passed by the leaned Magistrate First Class, Dharampur dated 17.2.1999, Anexure-B and order of the learned Additional Sessions Judge, Valsad dated 22.7.1999 Annexure-C and further prayer has been made to order release of Muddamal Gur seized in connection with Crime Register No.17/99 of Dharampur Prohibition Station. The respondent No.2 herein the Prohibition Station Officer of Dharampur registered offence being Crime Register No.17/99 punishable under Section 70(A) and 81 of the Bombay Prohibition Act. In connection with the aforesaid offence the investigating officer seized 200 bags of gur and produced it before the learned Judicial Magistrate First Class at Dharampur. The petitioner applied for release of Muddamal gur by filing application under Section 451 of the Criminal Procedure Code. That application was came to be rejected by the learned Judicial Magistrate, First Class, Dharampur. The petitioner challenged that order by filing revision application before the Additional Sessions Judge, Valsad. That was also dismissed. Hence this petition before this court.

#. It is not in dispute that as per the respondent the value of this muddamal gur is of Rs.50,000/=. During the course of the proceedings of this matter the court has given out to the petitioner's counsel that in case the petitioner is ready to deposit cost of Muddamal the court may consider the request of the petitioner for the release of the same in its favour. The learned counsel for the petitioner prayed that the petitioner may be permitted to inspect the Muddamal and then he will take the decision and make the statement accordingly. The petitioner went for the inspection of the muddamal gur but the learned counsel for the petitioner reported to the court that Muddamal gur is not available with the respondents. The respondents were directed by this court to make a statement re. Muddamal. Today in the court the learned APP filed affidavit of Shri L.S.Chaudhary, Prohibition Inspector, Additional Charge in Dharampur Prohibition Station. From this affidavit it is clear that the Muddamal gur is not available. The defence has been given that this Muddamal was melted even prior to the time on which the truck was released in favour of the petitioner under order of the Additional Sessions Judge in Criminal Revision Application No.27 of 1999. Be that as it may, this is not the stage where this court has to decide anything on merits. The fact remains that Muddamal is not available, the cost of this Muddamal was as per the Panchnama prepared and the statement made by APP is Rs.50,000/=. The Muddamal gur was in possession

of the respondents and it has disappeared. As per their case it is melted in their custody. Who are responsible for this loss is a matter to be ascertained, determined and decided by the competent authority and this amount of the loss has to be recovered from pocket of erring officer. This action will take some time and so long as the liability of the officer concerned is not fastened re. the cost of Muddamal, the State Government has to deposit the amount of Rs.50,000/= with the learned Trial Court within a period of one month from today. On deposit of this amount trial court is directed to invest the same in long term FDR. In case, ultimately, the petitioner succeeds in criminal case, he will get this money together with accrued interest thereon. If the petitioner fails in the case this amount has to be refunded back to the State Government with accrued interest. The head of the Department of Prohibition, Government of Gujarat is directed to hold the inquiry in the matter and fix the liability of the officer, who is responsible for this loss or disappearance of the Muddamal gur and this amount of Rs.50,000/= is to be recovered from him. This exercise has to be undertaken and completed within a period of 3 months from the date of the receipt of the writ of this order and compliance of the order be reported to the court.

The Special Criminal Application is dismissed subject to the term aforesaid. Rule is discharged. No order as to costs.

(S.K.Keshote, J.)

*Pvv